

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LANI E. CLARK,
Plaintiff
v.
LOIS KOLKHORST, Texas State
Senator, in her individual and
official capacity,
Defendant

Case No. 1:19-cv-198-LY-SH

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

**TO: THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE**

Before the Court is Defendant Lois Kolkhorst's Bill of Costs, filed December 21, 2021 (Dkt. 92). The District Court referred all motions in this case to the undersigned Magistrate Judge for resolution or Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas (Dkt. 29).

On December 7, 2021, the Court entered Final Judgment in this matter and awarded Defendant costs as the prevailing party pursuant to Federal Rule of Civil Procedure 54(d)(1). Dkt. 91. Defendant seeks \$1,886.40 in costs. Plaintiff Lani E. Clark did not file a response and so does not dispute Defendant's Bill of Costs.

The party who seeks to recover costs has the burden of producing evidence properly documenting and establishing the costs incurred. *Fogleman v. ARAMCO*, 920 F.2d 278, 286 (5th Cir. 1991). If the party being taxed with costs does not specifically object, however, a presumption arises that the costs being sought were necessarily incurred for use in the

case. *Schmidt v. United States*, No. 1:18-CV-0088-DAE, 2021 WL 6750898, at *2 (W.D. Tex. Jan. 12, 2021).

All fees Defendant seeks are for printed or electronically recorded transcripts necessarily obtained for use in the case, specifically, transcripts of the final pretrial hearing, bench trial, and Plaintiff's deposition. Dkts. 92 and 92-1. A court may tax these expenses as costs pursuant to Rule 54(d) and 28 U.S.C. § 1920. *W. Wind Africa Line, Ltd. v. Corpus Christi Marine Servs. Co.*, 834 F.2d 1232, 1237-38 (5th Cir. 1988).

I. Recommendation

Based on the foregoing, the undersigned Magistrate Judge **RECOMMENDS** that the District Court **GRANT** Defendant Lois Kolkhorst's Bill of Costs (Dkt. 92) and award \$1,886.40 in costs to Defendant.

IT IS FURTHER ORDERED that this case be removed from the Magistrate Court's docket and returned to the docket of the Honorable Lee Yeakel.

II. Warnings

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except on grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C.

§ 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED on July 27, 2022.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE